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May 16, 1951

Op. No. 51-136

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ARIZONA ATTORNEY GENERAL

Campbell, Rolle & Jones
Attorneys at Law
53 Second Street
P. O. Box 70
Yuma, Arizona

Attention: James B. Rolle, Jr.

Dear Sirs:

This will acknowledge receipt of your letter of May 12, 1951, asking two questions in connection with the District Improvement Act of 1945, (Section 16-2801, et seq. ACA 1939). Said questions are as follows:

The first question is whether water furnished would be a proper charge against the district.

Question No. 2 is whether the necessary legal expenses in connection with the formation and organization of the improvement district would be a proper general obligation of the district.

Answering your first question we invite your attention to Section 16-2802 ACA 1939, which so far as pertinent to your question provides:

"(a) An improvement district may be established in any unincorporated area by the board of supervisors of the county in which the proposed

district is located, for the purpose of making street, sewer and other local improvements, through special assessments in such districts, or the issuing of bonds for improvements, and levying taxes for the operation and maintenance of the same and of streets within the district." (Emphasis supplied)

It appears from the cases that the district is authorized to make special assessments in such districts for improvements. Young v. Town of Bossier, 155 La. 652, 99 So. 492.

However, the term of the Act itself we believe covers the situation, since Section 16-2811 ACA 1939 authorizes the board of directors of an improvement district whenever necessity or convenience may require to construct water works, together with the necessary or usual appurtenances for carrying water from irrigation ditches, water cars, streams or springs into, through or out of such district.

We also invite your attention to Article 13, Paragraph 7, Constitution of Arizona, which reads as follows:

"(Improvement districts political subdivisions.)--Irrigation, power, electrical, agricultural improvement, drainage, and flood control districts, and tax levying public improvement districts, now or hereafter organized pursuant to law, shall be political subdivisions of the state, and vested with all the rights, privileges and benefits, and entitled to the immunities and exemptions granted municipalities and political subdivisions under this Constitution or any law of the state or of the United States; but all such districts shall be exempt from the provisions of section 7 and 8 of article 9 of this constitution." (Emphasis supplied)

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Answering your second question we invite your attention to Section 16-2802, Subsection (b) 1949 Pocket Supplement, ACA 1939. Said section reads:

"(b) If the board of supervisors finds that the territory set out in the petition should not be incorporated into an improvement district, it shall dismiss the proceedings and tax the costs against the signers of the petition, and may collect the costs on the bond of the petitioners. If the district is established, certified bills covering the costs of the board of supervisors and the disbursements of the petitioners shall be presented to the board of directors of the district and paid out of the funds of the district." (Emphasis supplied)

From the above quoted provisions of the law and Article 13, Paragraph 7 of the Constitution of Arizona, above cited, it is our opinion that the water furnished by the Yuma Valley Reclamation to your district, as set out in your letter, would be a proper charge against said district. Also that if said district is established, certified bills for necessary expenses made in connection with the formation and organization of said district would be a proper charge against the district. On the other hand, should the district not be established, the costs would be collected on the bond of the petitioners.

As to the district hiring an attorney, it is our view that the board of directors of the district has the authority to retain legal counsel when necessary, as is granted municipalities and political subdivisions under the Constitution and laws of the State of Arizona.

Trusting we have answered your questions satisfactorily, we are

Respectfully yours,

FRED O. WILSON
Attorney General

MAURICE BARTH
Assistant Attorney General

MB:mw
cc: County Attorney, Yuma County

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